Sign Expo, Inc. *and* Local 137, Sheet Metal Workers' International Association, AFL–CIO. Case 2–CA–31340

October 30, 1998

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon a charge and an amended charge filed by the Union on March 24 and May 12, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 18, 1998, against Sign Expo, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Subsequently, on August 2, 1998, the Respondent filed an answer to the complaint. On September 25, 1998, however, the Respondent withdrew its answer.

On October 5, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On October 6, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, on September 25, 1998, withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.[1]

Accordingly, based on the withdrawal of the Respondent's answer to the complaint, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business at 725 11th Avenue, New York, New York, has been engaged in the manufacture and installation of signs. Annually, the Respondent, in conducting its business operations described above, purchases and receives at its New York, New York facility, from suppliers located within the State of New York, materials, goods, and supplies valued at more than $50,000, which goods and supplies originated from outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time sign makers and installers employed by the Employer at its facility located at 725 11th Avenue, New York, NY, excluding all other employees, including office clericals, and guards, professional employees and supervisors as defined in the Act.

Since April 2, 1997, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit. On or about April 2, 1997, the Respondent voluntarily agreed to recognize and bargain with the Union as part of an informal settlement agreement in Case 2–CA–30079, and since that date, the Respondent has recognized the Union as the representative. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about September 8, 1997, the Respondent and the Union met and exchanged bargaining proposals for an initial collective-bargaining agreement. On or about September 24 and October 21, 1997, the Union, by letter, requested that the Respondent continue to meet and bargain with it for an initial collective-bargaining agreement. Since on or about September 24 and October 21, 1997, the Respondent has failed and refused to meet and bargain with the Union for an initial collective-bargaining agreement.

On or about September 24 and October 21, 1997, the Union, by letter, requested that the Respondent furnish it with the following information:

> 1. A list of current employees, including their names, dates of hire, rates of pay, job classification, last known address, date of completion of any probationary period, and Social Security number.
>
> 2. A copy of all current company personnel policies, practices, or procedures.
>
> 3. A statement and description of all company personnel policies, practices, and procedures other than those mentioned in Number 2 above.
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> 4. A copy of all company fringe benefit plans, including pension, profit sharing, severance, stock incentive, vacation, sick days, health and welfare, ap-

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

prenticeship, training, legal services, child care, or any other plans which relate to employees.

5. Copies of all job descriptions.

6. Copies of any company wage or salary plans.

7. Copies of all disciplinary notices, warnings, or records of disciplinary personnel actions.

8. A statement and description of all wage and salary plans which are not provided under Number 6 above.

9. The regular day of the week your employees receive their pay, how the employees are paid, by cash or check, if by, the company policy for allowing employees to cash their checks on company time, the name and location of the bank the company has the check cashing arrangement with.

With the exception of employee social security numbers, the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.[2] Since on or about September 24 and October 21, 1997, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1), we shall order the Respondent to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, and to furnish the Union with the information it requested on September 24 and October 21, 1997, with the exception of employees' social security numbers.

ORDER

The National Labor Relations Board orders that the Respondent, Sign Expo Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 137, Sheet Metal Workers' International Association, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full time and regular part time sign makers and installers employed by the Employer at its facility located at 725 11th Avenue, New York, NY, excluding all other employees, including office clericals, and guards, professional employees and supervisors as defined in the Act.

(b) Failing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish the Union with the information it requested on September 24 and October 21, 1997, with the exception of employees' social security numbers.

(c) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 24, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] The Board has held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we dismiss the allegation concerning the failure to provide social security numbers. See, *American Gem Sprinkler Co.*, 316 NLRB 102, 104 fn. 7 (1995); *Turner-Brooks of Ohio*, 310 NLRB 856, 857 fn. 1 (1993) enfd. mem. 9 F.3d 108 (6th Cir. 1993); and *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 137, Sheet Metal Workers' International Association, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All full time and regular part time sign makers and installers employed by us at our facility located at 725 11th Avenue, New York, NY, excluding all other employees, including office clericals, and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, and put in writing and sign any agreement reached on terms and conditions of employment.

WE WILL furnish the Union with the information it requested on September 24 and October 21, 1997, with the exception of employees' social security numbers.

SIGN EXPO, INC.